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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: SEP 19 2007

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation on November 18, 1998. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to live in the United States with his wife.

The officer in charge concluded that the record did not establish that a qualifying relative would suffer extreme hardship if the applicant's waiver request were denied. He denied the application accordingly. *Decision of the Officer in Charge,* dated March 28, 2006.

On appeal, counsel asserts that the officer in charge failed to consider or fully address the various factors of the statutory terms and requirements in determining extreme hardship. Counsel also contends that the officer in charge did not give any weight to the fact that the applicant's spouse, [redacted] has already suffered due punishment and deserves a full reprieve. *Form I-290B*, dated April 21, 2006. Counsel submits a brief, a statement from [redacted] and medical documentation of her pregnancy, which ended in miscarriage.

The record indicates that the applicant and [redacted] then a lawful permanent resident, were married on February 11, 1997 and that on March 10, 1997, [redacted] filed a Form I-130, Petition for Alien Relative, on his behalf, which was approved on April 19, 1997. In October 1998, the applicant's application for a nonimmigrant visa to visit the United States was denied. On November 18, 1998, the applicant submitted fraudulent documents in an effort to obtain an H-1B nonimmigrant visa. Specifically, he submitted fraudulent employment letters and training certificates to establish himself as a programmer analyst, a field in which he had never worked or been trained. The applicant also attempted to erase the previous visa refusal stamp from his passport. This misrepresentation resulted in a determination by a U.S. consular official that the applicant was not eligible to benefit from the approved Form I-130 filed by [redacted]. *Memorandum from the Fraud Prevention Officer, American Consulate, Mumbai*, dated March 16, 2001. A subsequent Form I-601, Application for Waiver of Ground of Inadmissibility, filed by the applicant was denied by the legacy Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) on June 25, 2002. The AAO dismissed the applicant's appeal of that denial on February 26, 2004.

On August 25, 2003, [redacted] filed a Form I-129F, Petition for Alien Fiancé(e), on behalf of the applicant, which was approved on July 13, 2004. The applicant submitted a new Form I-601 waiver request on October 13, 2005. It is the CIS denial of this second Form I-601 that is now before the AAO.

The applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted in November 1998 to procure admission to the United States through fraud or willful misrepresentation. Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the present case, the qualifying relative is [redacted] the applicant's spouse. Hardship the applicant or other family members experience as a result of separation is not considered in section 212(i) waiver proceedings, except as it would affect the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch,* 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme

hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

As [redacted] is not required to reside outside the United States based on the denial of the applicant's waiver request, the applicant must establish that she would suffer extreme hardship whether she resides in Pakistan or remains in the United States. The AAO now turns to a consideration of the relevant factors in this case.

The record includes the following evidence to establish that [redacted] would suffer extreme hardship if the applicant's waiver request were to be denied: counsel's briefs, dated September 15, 2005 and April 21, 2006; [redacted]'s affidavits, dated August 25, 2005 and April 18, 2006; a July 16, 2005 affidavit from the applicant; counsel's May 3, 2007 documentation of medical complications with [redacted] pregnancy; counsel's June 25, 2007 submission of documentation related to [redacted] miscarriage; counsel's July 3, 2007 response to the AAO's request for additional evidence related to the miscarriage; a July 2, 2007 letter from [redacted] physician regarding her health; medical documentation related to the health of [redacted] parents; an August 30, 2005 letter from Quest Diagnostics, Incorporated regarding their employment of [redacted] as a medical technologist and documentation establishing [redacted]'s home ownership.

Based on the medical documentation submitted with regard to [redacted] miscarriage on June 11, 2007 and a July 2, 2007 statement from her physician, [redacted] that documents her emotional distress over the loss of her child, the AAO finds the applicant to have established that [redacted] would suffer extreme emotional hardship if she remains in the United States without the applicant.

As noted above, however, the applicant must also establish extreme hardship to his spouse in the event that she relocates to India. In her statement on appeal, [redacted] asserts that the impacts of relocation to India – the absence of any family ties other than the applicant in India; the emotional trauma she would suffer if separated from her aged and medically infirm parents; the loss of her employment as a medical laboratory technician in the fields of microbiology, molecular biology and virology; the "grave uncertainty" that she would find any employment, much less useful and productive employment, in India; and the loss of her home – would constitute an extreme hardship for her. [redacted] maintains that after nine years of living in separate countries, she and the applicant have suffered long enough and should be given a chance to live together as husband and wife. Previously, in her August 25, 2005 affidavit, [redacted] contended that relocation to India would result in a substantial hardship for her as it would not only require her to give up her work, but result in the loss of her 401(k) plan, eight weeks of paid vacation each year and her stock in Quest Diagnostics.

[redacted] has indicated that her parents are emotionally, financially and physically dependent on her and that it would be emotionally traumatic for her to leave them in the United States if she relocated to India. The AAO notes that the record includes no documentation that supports [redacted] claims regarding her parents' emotional and financial dependence. However, the record does include medical documentation, which establishes that [redacted] mother suffers from diabetes and hyperlipidemia and her father from hyperlipidemia and hypertension. The evidence also indicates that [redacted] father has a history of hemiretinal vein occlusion and cystoid macular edema. The record does not, however, document the effect of these conditions on the ability of [redacted]'s parents to perform daily activities or support [redacted] claims

regarding the assistance they require from her on a daily basis. Accordingly, the record fails to establish the dependence of [redacted] parents as the basis for the emotional trauma she states she would experience if she were to relocate to India. Moreover, there is no report from a licensed health care professional that supports [redacted] personal evaluation of the severity of her emotional reaction to leaving her parents in the United States.

Further, in [redacted] August 25, 2005 affidavit, she reports that her brother has immigrated to the United States. The AAO finds nothing in the record to indicate that [redacted] brother would be unable or unwilling to offer the same type of assistance to his parents as that currently provided by [redacted] thus reducing the concerns that [redacted] indicates she would experience if she relocated to India.

On appeal, [redacted] also indicates that if she relocated to India she would not necessarily find work as a medical technician, much less the type of meaningful medical research she currently performs. While the AAO notes [redacted] statements regarding her reduced employability in India, it finds the record to offer no documentation that would support this claim. The same is true for [redacted] assertions that the loss of her 401(k) plan, paid vacation and company stock would result in a substantial hardship for her and that she would have to give up her home. Without some documentary evidence of the lack of employment opportunities in Indian medical research or the status of [redacted] finances, her statements are of little evidentiary value. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, economic detriment, including the loss of employment and the inability to maintain a standard of living or to pursue a chosen profession, is not uncommon when individuals relocate outside the United States to join family members and, therefore, does not constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1996).

In determining whether relocation would constitute an extreme hardship for [redacted], the AAO has also considered the impact of her recent miscarriage. The AAO acknowledges the emotional distress [redacted] is experiencing following the loss of her child, as documented in the statement from her physician, Dr. [redacted] In his letter, [redacted] states that [redacted] is emotionally distraught following the loss of her child and needs to have the applicant with her.

Individually or cumulative, the hardships that [redacted] has previously claimed would result if she moved to India to live with the applicant do not constitute extreme hardship. Instead, they represent the distress and dislocation that normally accompany relocation to another country, i.e., separation from family, loss of employment, potentially reduced employment opportunities and financial loss. The AAO finds, however, that [redacted] recent miscarriage would compound such difficulties, resulting in hardships beyond those typically experienced as a result of removal. Accordingly, the AAO concludes that [redacted] relocation to India at this time would constitute extreme hardship.

The grant or denial of the above waiver does not, however, turn only on the issue of extreme hardship to a qualifying relative. It also hinges on the discretion of the Secretary. In the present case, the application will not be approved, as the record does not establish that the applicant merits a waiver of inadmissibility as a matter of discretion.

Although the miscarriage suffered by [redacted] was a critical factor in the AAO's determination of extreme hardship in the present matter, the AAO notes that the circumstances of this sad event were misrepresented to expedite the applicant's arrival in the United States. In a letter dated June 11, 2007, counsel wrote to the American consul in Mumbai, India asking that the applicant be issued a nonimmigrant visa or parole so that he could travel to the United States to join his wife who was 18 weeks pregnant and was about to lose their baby. On June 25, 2007, two weeks later, counsel wrote to the AAO, submitting pictures of the "one day old four and half weeks old premature fetus . . . that 'is not expected to survive' " and requested expedited consideration of the applicant's waiver request.

In response to an AAO request, counsel submitted medical evidence that establishes that the baby shown in the pictures with [redacted] and described as "not expected to survive" by counsel was, in fact, stillborn on June 11, 2007. Counsel's failure to report the stillbirth in his June 25, 2007 letter, two weeks after [redacted] miscarriage, and his submission of photographs of what he described as a one day old baby who was not expected to survive cannot be viewed as other than misrepresentation intended to encourage the expedited approval of the applicant's Form I-601.

The adverse factors in the present case are the applicant's submission of fraudulent documents to establish eligibility for an H-1B nonimmigrant visa and the misrepresentation just discussed. The favorable factors in the present case are the extreme hardship to the applicant's spouse if his waiver application is denied and the approved Form I-130 benefiting him.

It has been nearly nine years since the applicant submitted fraudulent documents in an effort to join his spouse in the United States and he has expressed remorse for his actions. However, the record establishes that in seeking to expedite the processing of his waiver request, the applicant has, once again, relied on misrepresentation to obtain an immigration benefit. Accordingly, while the AAO acknowledges the personal tragedy experienced by the applicant and his spouse, it cannot overlook the manner in which the applicant has used that tragedy to seek admission to the United States. Taken together, the favorable factors in the present case do not outweigh the negative factors and a favorable exercise of discretion is not warranted. Accordingly, the appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.